

REMARKS

In the outstanding Office Action, claims 35-91 were presented for examination. Rejected was advanced variously on the basis of 35 U.S.C. §102 or §103 against claims 35-91 as being anticipated by or unpatentable in view of references to Ordish et al. and Odom et al.

The Office Action has been most carefully studied. In this amendment applicant has added new claims 92-97 more particularly pointing out the invention. The new claims have been carefully written to avoid any questions under 35 U.S.C. §112, in accordance with the guidelines and requirements set forth in the outstanding Office Action. Accordingly, as will be discussed in detail below, it is believed that the application is clearly in condition for allowance.

Request for a Telephone Interview

In the event that any issues remain outstanding after entry and consideration of this amendment, the Office is respectfully requested to telephone the undersigned, prior to issuance of a final action, to arrange an interview for the purpose of resolving and reducing such issues and to advance the prosecution of the application.

Claim Rejections - 35 U.S.C. §112

Applicant's independent claims are rejected for failure "to particularly point out and distinctly state what applicant regards as his invention." However the rejection has not been supported by any reasoning. Nor have particular supposed deficiencies in

the claims been pointed out. Applicant has carefully considered the independent claims and believes they do in fact particularly point out and distinctly state what applicant regards as his invention. Lacking any detailed explanation of the grounds for rejection, applicant is unable to respond further. Accordingly, it is respectfully requested that the rejection be withdrawn or particularized in a non-final action.

Claim Rejections under 35 U.S.C. §101

The rejection under 35 U.S.C. §101 was raised in the Office Action dated May 22, 2001, Paper #8, in the same language as is now used. This rejection was fully answered in Applicant's Amendment after Final filed July 5, 2001. Reconsideration of applicant's submissions in that amendment is respectfully requested.

As explained in the Amendment after Final filed July 5, 2001, it is not the function of the claims to teach the implementation of the invention. nor is it the function of the claims to teach the reduction of the invention to practice. With regard to utility, applicant believes that all pending claims meet the prevailing standards for utility as set forth in the authorities cited by the Office and by applicant. Lacking any detailed explanation of the grounds for rejection, applicant is unable to respond further.

Absent any further guidance in the Office action, applicant will assume that the Office's expression of intensified doubts, in the outstanding Office action, that "the seller cannot know with certainty he will receive payment in the transaction." are intended to relate to what the Office believes to be an issue regarding the concreteness

of the utility of applicant's independent claims. This assumption is made in the spirit of cooperation with the Office to best understand the Office's concerns and thereby be able to advance the prosecution of the application.

"Certainty" is a rare commodity and it is not a necessary object of applicant's invention for the seller to know with certainty that he (or she) will receive payment in the transaction. However, applicant's claimed invention does provide the seller with a high level of confidence of payment. Even United States currency carries no certainty. Inflation erodes the value of the currency so that there is no certainty a dollar will be worth as much when it is spent as it was worth when it was received.

To facilitate the Office's understanding of the concreteness of the utility of applicant's claimed invention, base claim 35 has been amended to require that the recited payment draft be payable to the seller's order by a financial institution and be drawn on the buyer at the financial institution. Effectively, the invention enables the financial institution's creditworthiness to be substituted for that of the buyer, giving the seller a high level of confidence of payment. Claim 35 is further discussed hereinbelow.

New claim 92 recites that the financial institution makes the payment of the specified amount of money to the seller. Accordingly, there can be no issue of uncertainty of payment with regard to the invention as claimed in new claim 92 and no question as to the utility of the claimed invention.

The Invention As Now Claimed in Amended Claim 35

The invention claimed in amended claim 35 provides a trade finance method employing a novel event-actuated, or latent payment draft drawn by the seller and payable to the seller's order by a financial institution which draft is drawn on the buyer at the financial institution and is executed by the buyer, indicating agreement of the buyer and seller to the terms of the payment draft. The latent payment draft set forth in claim 35 becomes active and negotiable upon occurrence of the triggering event specified in the draft, which event, as claimed in claim 37, can be release or shipment of the goods or other product traded.

Because he or she does not have to commit funds or credit at a time substantially prior to the transaction, the buyer is provided with valuable usage of his or her funds for a significant additional time interval as compared with conventional finance methods, for example a letter-of-credit. The seller, on the other hand, does not have to rely upon the buyer's creditworthiness, but has the confidence of being paid by a reputable financial institution.

For example, employing the process described with reference to Figures 7-8 at page 33, line 26, once the pro-forma invoice and 1st of exchange have been executed by the buyer and returned to the seller, all the relevant documents, namely the pro-forma invoice, the latent 1st bill of exchange, the invoice issued concurrently with the triggering event, the 2nd bill of exchange are all in the control of the seller or the seller's financing agent. Thus, performance of the transaction prior to payment is in the hands

of the seller, and out of control of the buyer. The seller also controls the substitution of a banker's acceptance from the financing institution for the collateral provided by the 1st of exchange. Thus, control of the payment process is in the hands of the seller. Because the seller controls all the documents, they can control conformity and thus the result is concrete. From the seller's perspective, once he or she has received the banker's acceptance, they have received value for the transaction, and are therefor paid. Cash in hand is a certainty.

The applicant has taught and claimed in claims 45, 55-61 and 74-80 a unique method of substitution based on a pre-approved banker's acceptance (specification page 23 line 24-page 24 line 3), a banker's acceptance issuing agreement (page 35 line 23-page 36 line 6), and the possibility of credit enhancement (page 23 lines 8-15, page 36 lines 8-11) from the financing bank. Once the financing bank is satisfied with the creditworthiness of the buyer, or of the credit enhancement process, which process essentially says, if the buyer does not pay, I will, and the financing bank is willing to pre-approve an instrument substitution, then the seller has the relative certainty of payment by the financing bank. By not agreeing to the transaction if the financial institution does not approve the buyer's credit, the seller can avoid transactions that might have been made with some buyers who would not pay.

From the seller's perspective, in this preferred embodiment, there is a draft substitution process, that of a well-known bank for that of an unknown trader. The seller knows he will get paid, because he, or his agent, control all four of the relevant

documents precedent to obtaining the banker's acceptance.

As the examiner has noted, it is the creditworthiness of the buyer, or the enhanced creditworthiness of the buyer on which the bank accepting the banker's acceptance relies. As described in applicant's specification at page 23, lines 10-12 and page 36, lines 8-11, the buyer's creditworthiness can be enhanced employing primary credit insurers some of whom have resources equal to or greater than most banks. Credit enhancement can be an ultimate resource for cash to the financial institution providing the banker's acceptance in the event that the buyer should not pay.

The advantage for the seller in extending credit terms to the buyer is clear, and in being paid with a banker's acceptance is also clear. A banker's acceptance is usually discountable at a rate published daily in newspapers (e.g. 1.8% per annum (discounted)-- 90 day Bankers Acceptance--New York Times March 15, 2002.).

The banker's acceptance rate is based on the Discount Rate which was 1.5% as of March 15, 2002 as determined by the Federal Reserve Bank of the United States. The Discount Rate of the Federal Reserve Bank is typically 25 basis points or 0.25% below the announced Federal Funds Rate (1.75% as of March 15, 2002), and is typically substantially lower than the so-called "prime" rate.

For most transactions, the buyer is the source of cash. The cash is obtained through a new and novel use of one or more bills of exchange as taught by the

applicant.

Claim Rejections - 35 U.S.C. §103 Unpatentability over Ordish et al. in view of Odom et al.

Applicant has carefully considered the disclosures of Ordish et al. and Odom et al. and the combination of same applied by the Office. However, neither reference, nor the combination appears to be remotely relevant to claim 35 as now amended or to any other of applicant's claims for reasons which will now be explained.

A typical buy-sell transaction comprises an offer and acceptance cycle and a payment cycle. A car buyer looks at different offers from different dealers, meets with and perhaps haggles with them and eventually accepts the best offer. This is the offer and acceptance cycle. After the offer and acceptance cycle is completed, the car buyer takes delivery and the payment cycle is executed pursuant to the agreement made in the offer and acceptance cycle. Applicant's claimed invention relates both to enhancement of the agreement made in the offer and acceptance cycle and to a novel way of executing the payment cycle.

Ordish et al. and Odom et al. both relate only to the offer and acceptance cycle. Neither relates to the payment cycle. Both rely upon conventional cash, credit card or deposit account settlement. Neither provides an enhanced method of finance.

Thus, Ordish et al. has no disclosure of any financing methodology, nor of a

trade finance mechanism. Nor does Ordish et al. disclose any financial instrument, such as an order to pay, which is remotely analogous to applicant's payment draft.

Ordish et al. discloses at column 4, lines 6-17, a system wherein:

"bids for the trading instrument" (line 12)

"are matched against offers for given trading instruments" (line 14) "automatically providing matching transactions in order to provide confirmed trades for the given trading instruments" (lines 16-17).

This is a confirmation process for an anonymous offer and acceptance cycle, wherein Ordish et al. provides a method of noting the lack of a confirmation from one party within a prescribed time framework, and provides a method of reconfirming an unconfirmed trade. Ordish et al.'s trading instruments are described as

"trading instruments such as foreign exchange, stocks, bonds, commodities futures contracts, etc." (column 4, lines 13-14).

Trade confirmations, in the days before computers, were channeled through brokerage house purchase and sales departments and typically comprised a paper document on which one party wrote, "I sold x at y", and the other party wrote "I bought x at y".

Ordish et al.'s system as shown in Figure 8 allows the buyer and seller to remain

anonymous until the trade is confirmed, at which time

"it will automatically transmit both the 'confirmed trade' message and a ticket generation message to the counterparties which will cause the display 202, 204 to display a confirmed trade or a done message next to the particular transaction, as well as printing of the corresponding trade ticket by the associated conventional trade ticket printer 306, 308." (column 8 lines 44 -48).

This teaching is apparently intended to satisfy Ordish et al.'s objective of minimizing risks as to losses due to broken trades (column 3, line 67 - column 4, line 1) and is claimed in claim 1:

"In a matching system for trading instruments in which bids for said trading instruments are automatically matched against offers for given trading instruments" (column 9 lines 24-26)

which can result in confirmation of an anonymously completed offer and acceptance cycle.

Ordish et al. at column 3, lines 16-35 teaches the use of a time lapse generator to set a time after the making of an offer or a bid when its confirmation response should be received:

"If a client or keystation is making an offer to sell, his offer to sell is transmitted to the

host computer or central station (lines 24-25), and when a deal is matched, details of the amount offered for purchase are sent back to the selling client or keystation who provides a match acknowledgment message to the host computer. *The time lapse is generated at the client or keystation following the receipt of a message from the host or central system and will in due course generate an alarm if within a predetermined time lapse period a further message is not received back from the host or central system indicating a confirmed trade, such as along with a ticket generation message.* Italics added for emphasis. (Column 3, lines 24-35.)

Thus, Ordish et al. appears to teach generation of a warning signal to indicate that while one party has confirmed the trade to the central station, until the trade is similarly confirmed by the other counterparty to the central station, no confirmed trade exists.

If the seller confirms the sale to the central station, and the buyer confirms the buy to the central station, and the central station matches the seller selling and the buyer buying, a transaction is declared, and a confirmation printed showing the buyer buying from the seller and the seller selling to the buyer. Two separate tickets confirming the same transaction details are generated.

Ordish et al.'s transaction confirmation procedure neither includes nor provides applicant's latent payment draft as now defined in amended claim 35 and which includes an agreed order to pay an amount of money at a place, the financial institution recited, and time, without limiting the draft by stating the purpose of the payment. Nor is Ordish et al.'s *time lapse*, measured in seconds, e.g. 60 seconds (column 7, line 15) remotely relevant to the term of the payment draft employed in applicant's method

which commences with the *date* of occurrence of an activating event and may for example be 30 or 60 days or any other desired term measured in days or an equivalent thereof.

Claim 46 furthermore recites:

"furnishing a pro-forma invoice to the buyer before the execution of the first bill of exchange by the buyer"

and claim 47 specifies that

"the pro-forma invoice further comprises information indicia indicative of :

- e) the law applicable to the offer and acceptance cycle and to the underlying trade transaction;"

indicating that the pro-forma invoice confirms and records agreed details of the offer and acceptance that underlies the sale transaction, which is described in more detail in applicant's specification at page 43, lines 8-19.

The invention as claimed in claim 47 requires the simultaneous use of two distinct and separate instruments, constituted to exist at one place at any given time, a pro-forma invoice and the first of a set of two bills of exchange which are mutually extinguishable upon payment of either one. The claimed use of a pro-forma invoice to help define the parameters of the offer and acceptance cycle, while simultaneously

calling for an event activated latent payment draft to be completed is not remotely taught or suggested by the references of record considered singly or in the combination of Ordish et al. and Odom et al. applied by the Office.

As the invention is defined in claim 46, the pro-forma invoice contains particulars of the commercial transaction, which can accordingly be isolated from the latent payment draft.

Ordish et al. clearly states that ticket output confirms an offer to sell and an offer to buy, as follows:

Offer to sell:

"The connection and operation of the system will generically be described with reference to the situation in which Client A (KS A) makes an offer to sell one million of a given trading instrument at a given price..." (Column 5 lines 59-62.)

Offer to buy, or a bid:

"If client B (KS B) does not wish to buy the full one million of the given trading instrument but makes a counter offer as a message 3 to buy one hundred thousand of the trading instrument at that price, the host computer sends a message 4 to client A (KS A) that he has sold one hundred thousand of the trading instrument to client B at the offered price and it sends message 6 to client B (KS B) that he has bought that amount." (Column

5 line 67- col 6 line 7.

Applicant's amended claim 35 calls for the latent payment draft defined therein to
"order a payment of a specified amount of money".

Neither the offer nor the bid described by Ordish et al.'s constitutes an order for payment or recites a specified amount of money. Nor do Ordish et al.'s offer or bid constitute a proforma invoice as recited in claims 46-49, 52-53, and 68-80, which recites the extension of a specified amount of money for the total value of the transaction. A pro-forma invoice may list several items, price per item, an extension for each item and the total amount, which is reflected in the latent payment draft. As described by Ordish et al. the offer to sell and the bid to buy are each limited to units of one item at one time, and confirmed as units at a price.

Turning now to Odom et al., this reference does not correct the deficiencies of Ordish et al. because Odom et al. also lacks any method of financing a trade or any instrument remotely resembling applicant's novel payment draft, bill of exchange and other claimed instruments. Odom et al. teaches that:

"...the total amount involved may be placed in the trading floor's depository. If the participant used a line of credit issued by a credit card, approval would be verified and

the funds *immediately* transferred." Emphasis added. (Column 13 line 29-33.)

and that

"The wager would be 'locked' until the funds were transferred. This transfer would take no longer than a few seconds; this means that the participants could not reject the wager while the funds were being transferred. If for any reason, funds were unavailable, the wager (transaction) would be cancelled." (Column 13, lines 34-38.)

Based upon these and other texts in the specification, Odom et al. appears to be teaching a method of exchanging cash for goods. Nothing in Odom et al. teaches or suggests any credit extension process besides conventional credit card usage.

Both Ordish et al. and Odom et al. relate to centrally administered financial exchange systems, a business exchange and an information network, respectively, wherein cash is exchanged for goods in the same manner as a purchase at a retail store or a securities clearing house. Neither Ordish et al. nor Odom et al. teaches any extension of credit from the seller to the buyer.

In contrast, applicant claims, in amended claim 35, a finance method by which the seller can be paid immediately, and gives the buyer time to pay.

The motivation to combine Ordish et al. and Odom et al. described by the Office

"to teach a networked commerce system that permits a user to bid automatically on items that require time to search for items of interest to the buyer as taught by Odom (column 2, lines 14-26)."

is not relevant to the objective of applicant's claimed invention which is to provide an improved method of financing a trade transaction, i.e. a sale of a product good or service from a seller to a buyer that solves one or more of the problems of the prior art such as the complexity of the letter-of-credit procedure. For example, the invention claimed in amended claim 35 does not call for a user "to bid automatically on items of interest" nor does the buyer in applicant's claimed invention require "time to search for items of interest".

Nevertheless, even were Ordish et al. and Odom et al. to be combined, for which there is no motivation, the combination would still not provide applicant's invention as now claimed in amended claim 35, or any other claim, for the simple reason that neither reference teaches a method of financing a trade. Nor do they teach applicant's novel application of financial instruments and usage of same.

The Invention of Claims 36-97

Independent Claims 44, 64, 68, 75, 81 and 82 are also believed clearly and patentably distinguished from Ordish et al. in view of Odom et al. or any other reference or combination of references known to applicant for the reasons already of record in this application, and in particular for the reasons set forth in the Amendment

filed March 21, 2001, which latter reasons have not all been specifically addressed by the Office.

For example, in addition to the reasons explained in connection with claim 35, claims 44 and 64 are furthermore clearly patentable for the recitation of two mutually extinguishable bills of exchange which are mutually extinguishable. One of the bills of exchange, preferably the first, can be held as collateral in one location while the other, preferably the second, is used for collection. The mutual extinguishability feature enables collection made on the second bill of exchange automatically to extinguish the collateral provided by the first, without any further action being required. And as previously described, and for the reasons given herein and elsewhere on the record, these desirable results are for the first time provided by the invention claimed by applicant.

Dependent claims 36-43, 45-63, 65-67, 69-74, 76-80 and 83-97 recite many additional novel features that are not remotely suggested by any of the art of record, or any other art known to applicant. Some of these additional novel features were discussed in the amendment filed March 21, 2001 and others are clearly apparent from the language of the claims when read in light of the specification.

For example, Claims 38-40 recite that the payment draft or bill of exchange include transaction identifiers. The transaction identifiers can comprise a separately delineated transaction index, "on but not in", "visually and virtually" apparent but not

inclusive in the defined bill of exchange which contains unique identifiers that allows the electronic or paper document itself to index the transaction without including into the bill of exchange reference to the underlying transaction.

Moreover, the subject matter of the dependent claims without question has utility, as is apparent from applicant's specification. Accordingly the dependent claims are believed clearly patentable and early allowance of same is respectfully requested.

Summary

In summary, Ordish et al. relates to bid-and-offer matching and Odom et al. relates to an electronic exchange. Neither reference is remotely relevant to applicant's method of financing trade in a product claimed in amended claim 35 which method utilizes a novel financial instrument, a latent payment draft activated by a specified event, in a novel manner to provide the seller confidence of payment after release of the product, without requiring the buyer to prepay. Nor are Ordish et al.'s bid-and-offer matching or Odom et al.'s electronic exchange remotely relevant to applicant's novel uses of novel mutually extinguishable bills of exchange, each of which is a latent payment draft, of a pro-forma invoice to memorialize the details of agreement between the buyer and seller and of a draft substitution process to enhance the trade finance process as is claimed in various ones of applicant's now pending claims 35-97

Applicant's Comments on "Response to Arguments"

The Office's Response to Arguments contains several mis-statements regarding

the references, and the arguments set forth are conclusory and should therefore be withdrawn or substantiated. While these issues are believed moot in light of the amendments and remarks herein, applicant does not wish to make or imply any admissions against applicant's interest and will therefore address some of the inaccuracies that have been noted with the understanding that others may exist which are not admitted by applicant. For example, Ordish et al. does *not*, to applicant's understanding, disclose a "financial instrument comprising a pre-approved bill of exchange". Ordish et al.'s disclosure relates to trading instruments, i.e. financial instruments that are traded, not to instruments useful in financing a trade, which is a sale of goods or services or both. None of Ordish et al.'s trading instruments comprises a payment draft, or bill of exchange, drawn by the seller and payable to the seller's order by a financial institution. Nor does any of Ordish et al.'s trading instruments meet the other requirements of applicant's claims recited by the Office in this section of the action, "accepted in advance... prespecified event". Furthermore, while banker's acceptances are known *per se*, the use of a banker's acceptance in a draft substitution process as defined in applicant's claims is believed clearly novel and patentable. The references to the buyer's credit limit being "untested" and the buyer's ability to pay being "the critical path" are not understood by applicant but are believed moot, as explained hereinabove. To remove any question, applicant does not acknowledge that the buyer's credit limit is "untested" or that the buyer's ability to pay is "the critical path" in applicant's invention, insofar as these statements can be understood by applicant.

Version of Amended Claim(s) with Markings to Show Changes Made

35. (twice amended) A trade finance method for financing the sale of a traded product supplied by a seller to a buyer physically separated from the seller, the method comprising:

- a) the buyer providing an event-activated, latent payment draft to the seller or the seller's agent prior to release of the traded product from the seller's control wherein the event-activated prerelease payment draft:

- i) is drawn by the seller;
 - ii) is payable to the seller's order by a financial institution;
 - iii) is drawn on the buyer at the financial institution and is executed by the buyer to indicate the buyer's acceptance of the payment draft; and
 - iiiv) orders a payment of a specified amount of money, being a payment for the traded product, to be made within a term commencing with the date of occurrence of an ~~specified~~ activating event ~~indicated~~ specified in the payment draft ~~and selected by the buyer and the seller to occur being a~~ date occurring after execution of the payment draft by the buyer; and
- b) the seller releasing the traded product for delivery to the buyer subsequently to receiving the latent payment draft.